

MIKE TIMMONS,)	AGBCA No. 2003-192-F
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Appellant)	
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Representing the Appellant:)	
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Mike Timmons, pro se)	
HCR 2 Box 145)	
Brownfield, Texas 79316)	
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Representing the Government:)	
)	
Kimberley E. Arrigo, Esquire)	
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BOARD RULING ON JURISDICTION

September 16, 2003

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

This Board has jurisdiction over appeals from disputes on Standard Reinsurance Agreements (SRA's) between reinsured companies (or insurance companies) and the Federal Crop Insurance Corporation (FCIC). Under the SRA, insurers sell and administer multi-peril crop insurance (MPCI) which insurance is reinsured by FCIC. The Risk Management Agency (RMA), an agency of the U.S. Department of Agriculture (USDA), administers and oversees the federal crop insurance programs on behalf of FCIC.

On August 28, 2003, the Board received a telephone call from Mike Timmons of Brownfield, Texas, regarding an appeal of what Mr. Timmons described as a June 17, 2003, decision that he had received. The June 17 letter regarded a Risk Management Agency (RMA) decision, which had reviewed an indemnity payment to him and which demanded return of insurance funds paid to him. It was unclear from the telephone conversation as to what role, if any, the Board would have in this matter and further unclear as to why Mr. Timmons was being directed to appeal an

RMA decision. RMA decisions before the Board are decisions issued to an insurance company by RMA. Accordingly, the Board requested that Mr. Timmons provide a copy of the letter which he believed was requiring him to appeal the matter to the Board. Mr. Timmons complied by sending the letter to the Board by facsimile and further included an additional letter dated November 15, 2002.

The June 17, 2003 letter had been sent to Mr. Timmons by Ken R. Gilbert, Deputy Director, Quality Control & Investigations, American Growers Insurance Company (in rehabilitation). The letter recited that RMA had reviewed Mr. Timmons' 2001 policy and indemnity payment and had made a final determination that the crop he planted to cotton and grain sorghum was determined by the Southern Regional Compliance Office (SRCO) to be uninsurable crop land under the policy provisions. Mr. Gilbert continued that Mr. Sam Bruce, the Area Claims Director for American Growers, had appealed the SRCO decision on Mr. Timmons' behalf. Mr. Gilbert continued that American Growers had thereafter received a final determination from the RMA Director of Compliance, Michael Hand, which confirmed the earlier SRCO decision. Mr. Gilbert then stated that the result of the denial was that Mr. Timmons had been overpaid \$9,786 on his 2001 cotton claim and \$5,247 on his grain sorghum claim. After reciting the claimed overpayment, Mr. Gilbert also identified an unpaid premium amount and concluded stating, "the total refund due to American Growers Insurance Company (in rehabilitation) is \$21,596." Mr. Gilbert then stated that if Mr. Timmons disagreed with "this final administrative determination," he could appeal in accordance with 7 CFR 400.169 (b) (as revised). He said an appeal must be filed with AGBCA within 90 days of May 30, 2003.

As noted above, in addition to providing the Board with the June 17 letter, Mr. Timmons also provided the Board a letter of November 15, 2002. That letter to Mr. Timmons was from Sam Bruce, Claims Director of USAG Insurance Services, Inc. (USAG) (apparently a subsidiary or the affiliated company of American Growers). That letter advised Mr. Timmons of the SRCO finding that Mr. Timmons did not have coverage for certain conditions and further advised Mr. Timmons that SRCO had notified USAG that the claims must be corrected and money returned. Mr. Timmons was told that if he disagreed with the determination and had additional information, he could submit it. Mr. Timmons did that.

Upon review of the two letters submitted to the Board by Mr. Timmons, two conflicts appeared evident. First, Mr. Timmons was not an insurance company representative, but rather a farmer. Board jurisdiction over FCIC matters is limited to appeals by insurance companies on their reinsurance agreements with FCIC. Second, however, the June 13 letter did indeed advise Mr. Timmons that he must appeal to the Board for relief. That normally would not have been particularly significant except for the fact that the letter to Mr. Timmons, setting out his rights to appeal, was written by American Growers (in rehabilitation). That was significant because American Growers (in rehabilitation) sits in a unique situation as to its reinsurance policies and its relationship to FCIC. American Growers was placed into rehabilitation in November 2002 by the District Court of Lancaster County Nebraska. Under that Order, American Growers was put under state supervision and while enjoined from writing new business, the Rehabilitator was permitting American Growers to continue to adjust and pay claims. Because of American Growers' financial status, the Rehabilitator was working with RMA under a memorandum of understanding to assure that payments would continue on policies. Thus, while American

Growers was not under the direct supervision of RMA in its operations, its status was not that of the typical FCIC reinsured company. Because of that status, it was not immediately clear to the Board as to whether the letter of appeal was done under some sort of FCIC or RMA auspices and indeed was intended to affect the rights of Mr. Timmons.

In order to attempt to sort out matters, the Board set up a conference call with Mr. Timmons and Ms. Kimberley Arrigo, counsel for FCIC. In the interim between the scheduling of the conference and the actual conference, the Board acquired a third letter. As is the Board's practice, once the Board became aware of an RMA letter (such letter being referenced in the Gilbert letter to Mr. Timmons), the Board requested that document from the Government. That was provided to the Board by RMA. That letter was dated May 30, 2003, and designated as DETERMINATION OF THE DEPUTY ADMINISTRATOR OF RISK COMPLIANCE. The letter was issued to Sam Bruce, Claims Director of USAG Insurance Services, Inc. The letter addressed the acreage of Mr. Timmons and concluded that it was uninsurable under the policy. The letter on page 7 had a section titled FINAL ADMINISTRATIVE DETERMINATION. In that section Mr. Hand, Deputy Administrator for Compliance, denied the request of Mr. Bruce to allow the insurance payment to stand. The letter went on to state that if Mr. Bruce disagreed with the final administrative determination, he could appeal in accord with 7 CFR 400.169(b) and file that appeal with the AGBCA.

Once the Board was made aware of this third letter, it became more apparent that the requirement for Mr. Timmons to appeal, as set out in the letter from American Growers to Mr. Timmons, was done in error, was not a valid decision letter, and as such neither created a right for Mr. Timmons to appeal nor obligated him to pursue any claim at this Board in order to protect his rights. This was confirmed once the conference call was held. Ms. Arrigo agreed that the letter did not affect Mr. Timmons' rights, acknowledging that under the law, Mr. Timmons had no remedy at the Board, since he was not an insurance company with an SRA. If, and to the extent, American Growers was seeking the return of money from Mr. Timmons, any dispute would be solely between Mr. Timmons and American Growers and how that dispute would be handled would depend upon the terms of the insurance contract with American Growers. What is clear is that the appeal period identified by Mr. Gilbert and the references to jurisdiction at this Board were misplaced. As to the RMA decision, an appeal from that determination could only be taken by American Growers within the time frame specified in the RMA letter to Mr. Bruce. Ms. Arrigo stated that she or her office was contacting American Growers as to the matter and advising American Growers that no letter of appeal should have been sent to Mr. Timmons.

Two insurance-related disputes may exist: one between the farmer (Mr. Timmons) and his insurance carrier, and the other between the insurance carrier and the Government. The Board lacks jurisdiction over the farmer. The Board has jurisdiction over matters relating to FCIC under 7 CFR 400.169(b). That jurisdiction is limited to appeals of FCIC decisions by insurance companies. Farmers, such as Mr. Timmons, do not have standing to appeal a matter to the Board. An adverse RMA decision such as that issued by Mr. Hand on May 13, 2003, is a matter between RMA and the insurance company. The decision of RMA is not binding on the affected farmer but if not timely appealed is binding on the insurance company, in this case American Growers, as regards its obligation to RMA. Accordingly, the letter from Mr. Gilbert of American Growers to Mr. Timmons was essentially a legal nullity. It created no legal obligation

or authority on the part of Mr. Timmons to appeal to this Board.

RULING

Accordingly, the appeal is dismissed for lack of jurisdiction.

HOWARD A. POLLACK
Administrative Judge

Concurring:

ANNE W. WESTBROOK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
September 16, 2003